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UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND - HONG KONG 1/

[3 June 1996]

Introduction

1. The Committee considered the United Kingdom's fourth periodic report in respect of Hong Kong under the Covenant on 19 and 20 October 1995. In its concluding observations (CCPR/C/79/Add.57 of 3 November 1995) the Committee requested the Government of the United Kingdom to submit a brief further report, by 31 May 1996, on new developments with regard to the enjoyment of human rights in Hong Kong, pursuant to the recommendations contained in the Committee's concluding observations and in the statement by its Chairperson, on behalf of the Committee, concerning the continuing submission of reports in respect of Hong Kong after the change of sovereignty on 1 July 1997.

2. This supplementary report is submitted in response to that request. It deals in turn with each of the recommendations contained in the Committee's concluding observations and also with various other concerns expressed by the Committee in those observations. It also seeks to update the information

1/ In its concluding observations adopted at the end of the consideration of the part of the fourth periodic report of the United Kingdom of Great Britain and Northern Ireland relating to Hong Kong (CCPR/C/79/Add.57), the Committee requested the Government of the United Kingdom to submit a brief report, by 31 May 1996, for consideration by the Committee at its fifty-eighth session to be held in Geneva from 21 October to 8 November 1996.

previously provided to the Committee on other aspects of the enjoyment of human rights in Hong Kong. The process of promoting and protecting human rights in Hong Kong is a continuous and dynamic one. This report describes the position at the time when the report was finalized (late May 1996). But there may be further developments on various issues to record by the time the Committee examines the report. The United Kingdom Government hopes to have the opportunity to bring the Committee further up to date when its delegation takes part in that examination.

Submission of reports

3. In paragraph 4 of its concluding observations the Committee noted the relevant provisions of the Sino-British Joint Declaration of 19 December 1984 and also its own previously expressed views on the continuation, after 1 July 1997, of reporting obligations in respect of Hong Kong under article 40 of the Covenant. It specifically reiterated that, as those obligations will continue to apply, the Committee will be competent to receive and consider reports that must be submitted in relation to Hong Kong.

4. So far as the Joint Declaration is concerned, and as the United Kingdom Government has previously drawn to the attention of the Committee, the last paragraph of chapter XIII of annex I (JD 156), which is reflected in article 39 of the Basic Law (BL 39), constitutes an express undertaking by the Government of the People's Republic of China - an undertaking which is itself binding in international law - to ensure that the provisions of the two International Covenants (the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)), as applied to Hong Kong, will remain in force on and after 1 July 1997. The obligations imposed by the two Covenants, which are thereby assumed in respect of Hong Kong by the Chinese Government, include, specifically, the obligation to submit to the respective treaty monitoring bodies the reports required by article 40 of the ICCPR and article 16 of the ICESCR.

5. The United Kingdom Government has fully briefed the Chinese Government on the ways in which the Covenants are now applied in Hong Kong. It has made known its views as to how the Chinese Government may fulfil its obligations under JD 156.

6. The protection of human rights in Hong Kong afforded by the Covenants is highly valued by the people of Hong Kong. Accordingly, they set great store by the provisions in the Joint Declaration and the Basic Law which secure the continuing application of the Covenants on and after 1 July 1997 and, specifically, which enable the respective Committees to continue to discharge their responsibility, through the reporting systems established by the Covenants, to monitor the observance of the Covenants in Hong Kong.

7. The United Kingdom Government has raised this issue with the Chinese Government at the highest levels. It will continue to work for a satisfactory resolution.

Languages used in charge forms, charge sheets and court documents

8. In paragraph 20 of its concluding observations the Committee recommended that Chinese versions of official charge forms, charge sheets and court documents should be introduced as soon as possible.

9. The judiciary is committed to putting in place, before 1 July 1997, a truly bilingual court system which allows the use of Chinese, along with English, in courts of all levels. It has made considerable progress towards that goal and is confident of achieving it in good time. The current state of progress is as follows:

(a) Summonses issued by the Magistrates' Courts. Descriptions of most standard offences are now available in both English and Chinese. The judiciary and the Government are jointly devising bilingual statements of offences for use in summonses. They expect to complete the task by mid-1996. At the same time, the judiciary is upgrading its computer system so that, by 1 July 1997, it will be able to issue all summonses in both languages;

(b) Charge sheets. Paragraphs 170 and 171 of the United Kingdom's fourth periodic report under the Covenant in respect of Hong Kong described the progress made towards the introduction of bilingual charge sheets. There have been significant developments since that report was submitted. Bilingual sheets are now in use in the Magistrates' Courts, the District Court and the High Court. This development was phased in between August and December 1995. The experimental forms used in the police pilot scheme (also described in paras. 170 and 171 of the fourth periodic report) are now in use throughout the police force. But these forms are not yet fully bilingual because authentic Chinese translations are not yet available for all the relevant ordinances. As an interim measure, the police are using a bilingual glossary of terms commonly used for laying charges;

(c) Restriction on the use of Chinese in the District Court and the Lands Tribunal. This restriction was lifted in February 1996. Accordingly, plaintiffs and defendants may now file documents in either Chinese or English;

(d) Higher courts. The Official Languages (Amendment) Ordinance was enacted in July 1995, removing the restriction on the use of Chinese in the higher courts. The judiciary aims to extend the use of Chinese to High Court criminal cases in January 1997, to High Court civil cases in March 1997 and to all Court of Appeal cases in June 1997.

Investigation of complaints against the police

10. In paragraph 11 of its concluding observations the Committee expressed concern about the investigative procedures in respect of allegations of human rights violations by the police and in paragraph 21 it suggested incorporating non-police members in the investigation of all complaints against the police.

11. Paragraphs 25 and 26 of the fourth periodic report recognized that there were areas where the complaints handling system needed improving. They described the measures that the Hong Kong Government was taking to accomplish this. Since that report was submitted, the Hong Kong Government has taken the following further measures in that direction:

(a) The Independent Police Complaints Council (the IPCC) has been enabled to interview witnesses;

(b) Video/tape recording facilities have been installed in the Complaints Against the Police Office (CAPO) to ensure that interviews are transparent;

(c) There has been increased publicity for the independent monitoring role of the IPCC.

12. Other measures now in train, or shortly to be put in train, include the following:

(a) Comparative study of overseas police complaints systems. This is a joint study by the IPCC and the Hong Kong Government. The aim is to learn from the experience of other jurisdictions and to identify what further improvements might be made. The study has entailed visits to the United States of America, Canada, Australia, Japan and Singapore. The findings will be reported in May/June 1996;

(b) IPCC observers scheme. Since April 1996 members of the IPCC have been able to observe the CAPO investigation process;

(c) Independent review of CAPO procedures. In January 1996, the Hong Kong Government seconded a senior civil servant to the IPCC to carry out this review, which will be completed in June/July 1996;

(d) IPCC to become a statutory body. The Hong Kong Government is working on a bill to put the IPCC on a statutory basis. Before finalizing the bill, it will need to take into account the findings of the comparative study ((a) above) as well as the working of the IPCC observers scheme ((b) above) and the outcome of the independent review of CAPO procedures ((c) above).

Human rights commission

13. In paragraph 22 of its concluding observations the Committee recommended a reconsideration of the Hong Kong Government's decision on the establishment and competence of a human rights Commission.

14. The Hong Kong and United Kingdom Governments have carefully reconsidered this matter in the light not only of the Committee's recommendations but also of similar views expressed by some non-governmental organizations and other members of the community in Hong Kong. They have concluded that the Hong Kong Government's original assessment - described and explained in paragraph 10 of the fourth periodic report - was correct. They remain convinced that a human rights commission is not the best way forward in the particular circumstances of Hong Kong. As explained in the fourth periodic report, human rights

in Hong Kong are founded on the rule of law, an independent judiciary and a justiciable Bill of Rights (established by the Bill of Rights Ordinance (BORO)). There is a sound and comprehensive legal aid system; an effective ombudsman (the Commissioner for Administrative Complaints (COMAC)) and a range of other institutions for the investigation and redress of complaints; a fairly elected legislature; and a progressive approach to human rights education. The Hong Kong Government also operates in the full view of a free and active press, and its policies and practices are subject to rigorous monitoring by local and international NGOs.

15. This system has served Hong Kong well and provides a suitable framework for securing and enhancing the protection of human rights in the territory. The Hong Kong and United Kingdom Governments strongly maintain the view that it is more sensible to build on this framework than to devise an entirely new institution with a wide-ranging but imprecise remit in the field of human rights.

16. To address areas of specific concern, the Hong Kong Government has made legal aid more readily available in cases involving the BORO, has given the judiciary additional resources to reduce court waiting times, and has improved the ombudsman system. It is establishing a statutory equal opportunities commission to tackle discrimination on the grounds of sex and disability and a privacy commissioner to promote and enforce compliance with new data protection laws.

Comprehensive anti-discrimination legislation

17. In paragraph 23 of its concluding observations the Committee recommended that comprehensive anti-discrimination legislation be adopted, aiming at eliminating all forms of discrimination prohibited under the Covenant (and not already prohibited by existing Hong Kong law).

18. The Hong Kong Government is fully committed to the elimination of discrimination and the promotion of equal opportunities for all. But because legislation in this area would have far-reaching implications for the community as a whole, it believes that a step-by-step approach - allowing both the Government and the community thoroughly to assess the impact of such legislation in the light of experience - offers the best and most suitable way forward for Hong Kong.

19. Accordingly, the Hong Kong Government has conducted two discrete studies of discrimination - on the grounds of family status and on the grounds of sexual orientation - to identify the extent of problems in these areas and options for addressing them. As part of the study process, consultative documents were published in January 1996 to solicit public views. The consultation period closed on 31 March and the Hong Kong Government is now analysing the submissions which it received. The findings of that analysis will help the Government determine the way forward. Legislation is an option that will be examined. A similar study on the question of age discrimination in employment is now in progress. A fourth study, on the issue of racial discrimination, will start later this year. Meanwhile some members of the Hong Kong Legislative Council have stated an intention to introduce members' bills on these and other aspects of discrimination.

Sex Discrimination Ordinance

20. In paragraph 8 of its concluding observations the Committee welcomed the enactment of the Sex Discrimination Ordinance and the Disability Discrimination Ordinance and the proposed establishment, in 1996, of an equal opportunities commission. The Commission in fact officially came into being on 20 May 1996 with the formal appointment of its Chairperson and other members. It will become fully operational once all its staff are in place, probably in the autumn of 1996. But a preparatory team is already making arrangements to ensure that the Commission is in a position to start work without delay.

21. In paragraph 13 of its concluding observations the Committee expressed regret that the Sex Discrimination Ordinance was not yet in force. It also expressed concern about the limit on the damages that might be awarded under it; about the absence of a power to order the reinstatement of women who had lost their jobs because of sex discrimination; about significant exemptions which it contained; and about the fact that its application was limited to discrimination based on gender and marriage. In paragraph 23 the Committee recommended that these deficiencies be overcome by appropriate amendments.

22. For practical reasons, the Hong Kong Government has considered it necessary to set up the Equal Opportunities Commission before bringing the provisions of the Sex Discrimination Ordinance into force. International experience indicates that most complaints involving discrimination arise in the key area of employment: most people who encounter discrimination do so in the workplace. The Hong Kong Government therefore considers that the urgent priority is to develop clear, concise codes of practice - written in plain, non-legalistic language - to help employers and employees understand the new laws and how they affect their day-to-day working relationships. At the same time, the Hong Kong Government believes that it should not give effect to a new form of legislation that impinges so closely on everyday social interaction before that legislation is made accessible to the public in the form of the codes. It considers that the task of devising the codes is best entrusted to a dedicated, expert body. Accordingly, it has placed this project high on the initial task list of the Equal Opportunities Commission, which is the primary executive body for the implementation of the Sex Discrimination Ordinance and the Disability Discrimination Ordinance. The Sex Discrimination Ordinance's provisions on employment matters will come into force once the codes are ready. However, appreciating that the apparent delay in implementing that Ordinance was giving rise to concern, the Hong Kong Government directed the preparatory team for the Equal Opportunities Commission to undertake the necessary background research. That research was well under way when the Commission came officially into being on 20 May 1996.

23. The question of a power to order reinstatement, the question of limits on damages and the question of exemptions were all thoroughly debated in the Legislative Council during the passage into law of the Sex Discrimination Ordinance. That Ordinance nevertheless empowers the Equal Opportunities Commission to monitor its working and to formulate proposals for its amendment should it or the Governor consider that to be necessary. In those circumstances, the Hong Kong Government took the view that it should not

pre-empt the work of the Equal Opportunities Commission by considering changes to the Ordinance before the Commission itself came into operation. The Hong Kong Government notes that a member of the Legislative Council proposes introducing a member's bill amending both the Sex Discrimination Ordinance and the Disability Discrimination Ordinance. It hopes that the bill's proponents will accept its view that the Equal Opportunities Commission should first have the opportunity to enforce and monitor the operation of the two Ordinances and that it will then be the Commission that will be best placed to assess the need for, and the nature of, any changes to them.

24. The steps being taken by the Hong Kong Government to determine how best to deal with discrimination that does not fall within the scope of the Sex Discrimination Ordinance or the Disability Discrimination Ordinance are discussed in paragraph 19 above. As is there explained, the Hong Kong Government takes the view that each different form of discrimination raises different considerations and that each, therefore, requires careful examination and analysis, separately and in its own right. Hence the studies that have been, or will shortly be, put in train, as described in paragraph 19: these will help the Hong Kong Government determine the way forward in areas of discrimination not already covered by the two Ordinances.

Vietnamese migrants

25. In paragraph 17 of its concluding observations the Committee noted with satisfaction the efforts by the Hong Kong Government, in cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR), to care for the needs of the Vietnamese migrants living in detention centres in the territory. But it expressed concern about the long-term detention of many of those persons and about their living conditions while in detention, and in paragraph 24 it urged the Hong Kong Government to improve their living conditions, particularly in respect of children, and to ensure that the refugee status of all detainees was speedily determined, with right of judicial review and legal aid. The process of deportation and removal of non-refugees of Vietnamese origin should, the Committee recommended, be closely monitored to prevent abuse.

26. Living conditions. The Hong Kong Government, together with UNHCR and other agencies and organizations, makes every effort to provide decent and humane living conditions for the Vietnamese migrants in the detention centres. The Hong Kong Government provides the migrants with three meals daily, according to dietary scales approved by the Department of Health. Vegetarian meals are provided for those who prefer them, and additional food is provided to pregnant women and the sick, on medical advice. The Hong Kong Government also provides clothing and such things as eating utensils and toiletries, according to a fixed scale. As regards medical care, the Hong Kong Government provides general out-patient clinics and first-aid services. Médecins sans frontières provides well-baby clinics, and Christian Action provides dental services under the auspices of UNHCR. Persons who need medical services which cannot be provided in the detention centres are referred to hospitals and specialist units outside the centre. In the centres there are toilets, compartmentalized shower facilities with warm water during the winter, and open washing areas. The migrants are free to send and receive letters and parcels, and they are provided with television and newspapers. In addition,

UNHCR operates information centres with newspapers, journals and videos - including videos produced in Viet Nam - to keep the migrants informed of developments in Viet Nam. Open space is available for outdoor activities and there are also TV and recreation rooms. Counselling, welfare and assistance are provided by the Social Services Section of UNHCR and special attention is given to vulnerable groups such as the disabled, children and the elderly. The Hong Kong Family Planning Association provides educational programmes, clinical programmes and face-to-face counselling. The religious needs of the migrants are also catered for: regular services and visits are provided by the three main religious groups (Catholic, Protestant and Buddhist). As was pointed out in paragraph 100 of the fourth periodic report, conditions in the detention centres are not kept hidden from public scrutiny: the centres are frequently visited by representatives of international and local non-governmental organizations who report on what they find. Their comments and criticisms are considered very seriously by the Hong Kong Government, which has taken all reasonable measures to meet them whenever they have been shown to be well founded. In these circumstances, the Hong Kong Government cannot accept that the living conditions in the detention centres give rise to any violation of articles 9 or 10 of the Covenant or, specifically, that the detainees are treated otherwise than "with humanity and with respect for the inherent dignity of the human person."

27. The children. The Hong Kong Government shares the special concern of the Committee about the situation of the children of Vietnamese migrants who live with their parents in detention centres pending their parents' repatriation to Viet Nam. But it is not the Hong Kong Government that has brought about the need for them to be in the centres or that chooses to prolong that need. The power to bring it to an end lies with the parents, who are aware that they have no legal right to remain in Hong Kong and no valid reason for not returning to Viet Nam. The Hong Kong and United Kingdom Governments want them to return to Viet Nam as soon as possible, for the benefit of their children as well as themselves, through the arrangements provided by UNHCR. However, so long as these children remain in Hong Kong, the Hong Kong Government recognizes and respects its duty under the Covenant to ensure their human rights and it has consistently sought to discharge that duty by taking all reasonably practicable measures, appropriate to the status and special needs of children, to promote and protect their rights and their welfare. In this context the attention of the Committee is drawn to paragraphs 371 to 386 of the United Kingdom's initial report in respect of Hong Kong under the Convention on the Rights of the Child (CRC/C/11/Add.9) and to the measures taken and the facilities provided, as there described, specifically for the benefit of Vietnamese migrant children.

28. Determination of refugee status. With relatively few exceptions (mainly newborn babies and recent arrivals from Viet Nam), all the Vietnamese migrants now in Hong Kong have already been screened to determine their refugee status. This exercise was effectively completed in October 1994. The screening system was designed in consultation with UNHCR, which was also closely involved in, and monitored, its implementation. UNHCR reviewed all negative decisions and exercised its right to reverse the screening decisions in the case of over 1,500 migrants. There have been judicial reviews of various screening decisions and the courts have found the screening system itself to be fair and reasonable. Vietnamese migrants have the same access to the judicial system

as everyone else in Hong Kong; they are likewise eligible for legal aid. One case, involving Vietnamese migrants formerly settled in China, will be heard by the Privy Council in July this year.

29. Recently, the Judicial Committee of the Privy Council reversed a decision by Hong Kong's Court of Appeal by ordering the release from detention of four migrants from Viet Nam who were all of Chinese ethnic origin but who had, or had at some point claimed to have, ties with Taiwan as a result of which they apparently were, or would be, regarded by the Vietnamese authorities as foreign nationals, though the Vietnamese authorities had not yet responded to the request by the Hong Kong Government to receive them as returning migrants. (This is the case referred to in paragraph 108 of the fourth periodic report.) The details of the reasons given by the Judicial Committee for ordering their release varied according to the particular facts of the respective cases. But, essentially, the Judicial Committee held that, in the light of the Vietnamese authorities' known policy of refusing to accept persons whom they regarded as foreign nationals and in the absence of contrary indications in the relevant Hong Kong legislation, it was unlawful for the Hong Kong Government to keep the appellants in detention "pending removal" to Viet Nam once there was reason to believe, despite the absence of a response from the Vietnamese authorities, that they would not be accepted; and in any event that it was unlawful to keep them in detention pending removal once it had become clear that removal was not going to be possible within a reasonable time. At the time when this report was finalized, the Hong Kong Government had released 275 migrants whom it believed fell within the ambit of the Privy Council judgement. Meanwhile, the Vietnamese authorities have agreed to study again the question of "non-nationals". A response is awaited from the Taiwan authorities as to whether they will admit any of these migrants for resettlement.

30. There is good evidence that the policy of the Vietnamese Government concerning the acceptance of non-nationals is flexibly applied: to the knowledge of the Hong Kong Government the Vietnamese authorities have cleared for return some 99 families whom they regarded as non-nationals. To clarify the position in future cases, a new provision has been added to the Immigration Ordinance to the effect that, where a request has been made to the Vietnamese Government for the repatriation of a person, the purpose of that person's detention "pending removal" shall include awaiting a response to that request from the Vietnamese Government. However, the provision makes clear that this in no way limits the ability of the courts to determine, in any particular case, that a person is being detained otherwise than "pending removal" or, specifically, that he has been detained for an unreasonable period.

31. Removals and deportations. The process of removing and deporting persons who have been definitively determined not to be refugees is indeed closely monitored to ensure that there is no abuse. The monitoring process - which has been in place since September 1994 - follows the recommendations of an inquiry by non-official justices of the peace into an operation to transfer certain Vietnamese migrants from one detention centre to another which took place on 7 April of that year (see para. 116 of the fourth periodic report). It is carried out by independent monitors comprising representatives of NGOs (Oxfam, Christian Action and Médecins sans frontières) and non-official

justices of the peace. To ensure that the process is transparent, the monitors prepare reports on all removal operations, and those reports are published in full.

32. Voluntary return. The Hong Kong Government has no wish to keep any Vietnamese migrants in detention in Hong Kong. But the vast majority of Vietnamese migrants now in Hong Kong have exhausted the process of determining whether or not they are genuine refugees and have in fact been found to be non-refugees in accordance with the 1951 Convention and its 1967 Protocol. Accordingly, they have no legal right to remain in Hong Kong and no valid reason not to return to their own country. The Hong Kong Government and UNHCR have counselled them - and continue to counsel them - to return voluntarily to Viet Nam. Those who agree to do so are given every assistance. In addition to a UNHCR reintegration allowance of US$ 240 which is paid to each migrant on return to his home village, every person who returns voluntarily receives a grant of US$ 200 in Hong Kong before departure. The safety and well-being of those who return to Viet Nam is monitored both by UNHCR and by the British Embassy, and the reports indicate that there have been no cases of ill-treatment or persecution. In these circumstances, and so long as the persons in question refuse to leave Hong Kong voluntarily, the Hong Kong Government has no practical alternative to keeping them in detention: but it of course accepts and seeks to observe its duty to ensure, by all practicable means, that their human rights under the Covenant and other relevant instruments are at all times fully respected.

Electoral matters

33. In paragraph 19 of its concluding observations the Committee expressed the view that the present electoral system in Hong Kong in respect of elections to the Legislative Council - in particular the arrangements relating to functional constituencies - was not in conformity with articles 2.1, 25 (b) and 26 of the Covenant, and in paragraph 25 it recommended that steps be taken to bring it into conformity with those provisions.

34. Functional constituencies have been part of Hong Kong's political system since 1985, when elections to the Legislative Council were first held. Their purpose was to provide a representative voice for the territory's economic and professional sectors, reflecting their importance in the community. These constituencies - and the system of election to them - have served Hong Kong well. But the electoral system is not static, and it will continue to develop as circumstances in the territory change, which of course includes the transfer of sovereignty. The present network of functional constituencies must be seen as a transitional stage in the evolution of Hong Kong's political system. The ultimate aim, as declared in article 68 of the Basic Law, is the election of all the members of the Legislative Council by universal suffrage.

35. It is against this background that the Hong Kong and United Kingdom Governments must dissent from the Committee's assessment that the concept of functional constituencies gives undue weight to the views of the business community or discriminates unreasonably or disproportionately between different classes of voters. Nor do they share the view taken by the Committee of the scope and effect of the reservation to article 25 (b) of

the Covenant that was made by the United Kingdom Government when it ratified the Covenant. Accordingly, they respectfully maintain their view that the electoral system which now obtains in Hong Kong in respect of elections to the Legislative Council is appropriate and justifiable in present circumstances and gives rise to no incompatibility with any of the provisions of the Covenant.

Other developments

36. Bill of Rights Ordinance. In October 1995, the Legal Affairs Sub-group of the Preliminary Working Committee (PWC), established by the Chinese Government, advised the Chinese Government that, in their view, three sections of the Bill of Rights (BORO) had the effect of giving the BORO a status above all other laws including, after 1997, the Basic Law. These provisions were, the Sub-group advised, inconsistent with the Basic Law and should be repealed after 30 June 1997. The sections in question were:

(a) Section 2 (3), which deals with the interpretation of the Ordinance and the incorporation into domestic law of provisions of the Covenant as applied to Hong Kong;

(b) Section 3, which provides for the repeal of inconsistent pre-existing legislation;

(c) Section 4, which states a general principle for construing future legislation.

37. The Sub-group also advised that provisions in (or made under) six Ordinances which had been amended to ensure that they were in line with the BORO were now, as a result of the amendments, inconsistent with the Basic Law and should be restored to their original form. The Ordinances in question (or the relevant provisions made under them) were the Societies Ordinance, the Television Ordinance, the Telecommunication Ordinance, the Broadcasting Authority Ordinance, the Public Order Ordinance and regulations under the Emergency Regulations Ordinance. The purpose and effect of the amendments in question were explained in the fourth periodic report in the sections of that report relating to articles 4, 19, 21 and 22 of the Covenant.

38. The Sub-group further advised that two other Ordinances were also inconsistent with the Basic Law and would need to be repealed. These were:

(a) The New Territories Land (Exemption) Ordinance, which now makes it possible for women to inherit land in the New Territories in cases of intestacy (see para. 356 of the fourth periodic report);

(b) The Legislative Council Commission Ordinance, which provides for the provision of administrative support and services to members of the Legislative Council.

39. The BORO does not have - nor can it have nor does it purport to have - a status different from that of any other Ordinance in Hong Kong. Like all Ordinances, it will be subject to the Basic Law. Indeed, because its purpose

is precisely to give effect in Hong Kong to the provisions of the Covenant as applied to Hong Kong, it implements and is fully consistent with article 39 of the Basic Law (and para. 156 of the Joint Declaration) which expressly provides that the provisions of the Covenant as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region. There is therefore no valid reason either to tamper with the BORO itself or to restore to their earlier form the Ordinances and other laws that were amended specifically to ensure that they were in line with the BORO (and therefore with the Covenant).

40. The Sub-group's proposals have accordingly caused widespread concern in Hong Kong. The United Kingdom Government believes that the question of amendment of the BORO, and of those Ordinances amended pursuant to it, should be left to be considered by the Government of the Hong Kong Special Administrative Region. The United Kingdom Government has raised this matter with the Chinese Government at the highest levels. It will continue to do so.

Provisional legislature

41. The Legislative Council was elected in September 1995. The electoral arrangements are described in paragraphs 311-316 of the fourth periodic report. In March 1996, the Preparatory Committee for the establishment of the Hong Kong Special Administrative Region (established by the Chinese National People's Congress) passed a resolution to set up a provisional legislature.

42. The position of the Hong Kong and United Kingdom Governments is clear. The Legislative Council has been fairly and openly elected through arrangements that are consistent with the Joint Declaration and the Basic Law. These arrangements meet the community's wish for credible and representative institutions which are capable of enduring beyond 1997. It is in Hong Kong's interests that the Legislative Council elected in September 1995, which has a clear and legitimate mandate, is allowed to serve its full term. This is the best way to ensure continuity for Hong Kong's legislature and for the views of Hong Kong people to be properly represented in this institution.

43. Neither the United Kingdom Government nor the Hong Kong Government accepts that there is any need for a provisional legislature. Neither the Joint Declaration nor the Basic Law makes any reference to such an institution. The United Kingdom Government has made its position clear to the Chinese Government on various occasions, including during a meeting between the British Prime Minister and his Chinese counterpart in March 1996. It will continue to make its views known to the Chinese Government.

Ethnic minorities

44. The "ethnic minorities" comprise persons who are British Dependent Territories citizens (BDTCs) by virtue of their connection with Hong Kong but who are not ethnic Chinese and who have no nationality other than British. British Dependent Territories citizenship will cease at midnight on 30 June 1997. However, like other Hong Kong BDTCs, persons belonging to these ethnic minorities can, under the Hong Kong (British Nationality) Order 1986, apply for the status of British National (Overseas) (BN(O)), provided that

they do so before 1 July 1997. They then retain that status for life. If they do not so apply before 1 July 1997, they will automatically become British Overseas citizens (BOCs) on that date if they would otherwise be stateless. If they do then become BOCs, their children and, in most cases, their grandchildren will also be BOCs if otherwise they would be stateless at birth. Neither BN(O) status nor BOC status confers a right of abode in the United Kingdom. But the Joint Declaration and the Basic Law guarantee the right of abode of these persons in the Hong Kong Special Administrative Region after 1 July 1997. No member of the ethnic minorities will be stateless after the transfer of sovereignty and the position of these persons in Hong Kong is secure.

45. Representatives of the ethnic minorities have pressed the United Kingdom Government to grant British citizenship to persons belonging to these minorities. This would give them the right of abode in the United Kingdom. The United Kingdom Government has stated that if, against all expectations, any person who was solely a British national came under pressure to leave Hong Kong, the United Kingdom Government of the day would consider with considerable and particular sympathy his or her case for admission to the United Kingdom. This earlier assurance was clarified and reinforced when the British Prime Minister said in Hong Kong in March that any member of the ethnic minority community, being solely a British national, who came under pressure to leave Hong Kong would be guaranteed admission to the United Kingdom. The ethnic minorities, whose families have been in Hong Kong for many generations, want to stay in Hong Kong. The United Kingdom Government believes that this reassurance will give them the confidence they need to stay.

Right of abode in Hong Kong

46. The United Kingdom Government is pressing for agreement with the Chinese Government through the Sino-British Joint Liaison Group on how to implement the Basic Law provisions on the right of abode in Hong Kong. Those concerned need to know in advance of 1 July 1997 how their own position in Hong Kong will be affected. Agreement has already been reached in part, but some questions, such as the right of abode for ethnic Chinese permanent residents who hold a foreign passport and for other foreign nationals, are still to be resolved.

47. During his visit to China in January 1996, the United Kingdom Secretary of State for Foreign and Commonwealth Affairs received from the Chinese Vice-Premier and Foreign Minister, Mr Qian Qichen, an assurance that all those who now had permanent residence in Hong Kong would be able to retain it after 1997. The Hong Kong and United Kingdom Governments welcome this assurance. The Standing Committee of China's National People's Congress has recently taken a decision on the implementation of Chinese nationality law in relation to the Hong Kong Special Administrative Region. This has a direct bearing on the right of abode in Hong Kong. The United Kingdom and Chinese Governments will continue their dialogue with a view to an early resolution of this issue.

Ease of travel (visa-free access)

48. A high degree of convenience of travel for the people of Hong Kong is important for maintaining Hong Kong's status as an international business and financial centre. The Sino-British Joint Liaison Group is considering how best to achieve that goal.

49. After 1997, most permanent residents of Hong Kong will hold the BN(O) passport, issued by the British Government, and/or the Hong Kong Special Administrative Region (HKSAR) passport, issued by the HKSAR Government. In January 1996, the British and Chinese Governments signed an "Agreed Minute" on the responsibilities of the Chinese Government, the present Hong Kong Government and the future HKSAR Government in preparing the HKSAR passport. The preparatory work is now under way. The Agreed Minute has helped to answer some of the questions which other countries will need to consider in deciding whether to allow HKSAR passport holders visa-free entry. In March 1996, during his visit to Hong Kong, the British Prime Minister announced that the United Kingdom Government would allow visa-free entry for HKSAR passport holders visiting the United Kingdom. The United Kingdom and Hong Kong Governments hope that other countries will follow this example. At present, BN(O) passport holders enjoy the convenience of visa-free access to some 80 countries and territories. The United Kingdom and Hong Kong Governments will continue to discuss with the Chinese Government how best to maintain and improve freedom of travel for Hong Kong residents.

50. It is also important that Hong Kong continues to maintain a liberal visa regime beyond 1997. This is in the interest of Hong Kong to enable it to maintain its position as an international business and financial centre, as well as an important tourist destination.

Freedom of expression

51. Review of laws. The Hong Kong Government has continued to review existing laws which may affect freedom of expression, including press freedom, and to take steps to repeal or amend any which are obsolete or may threaten that freedom. In the 1995/96 Legislative Council session, it will introduce legislation to repeal provisions conferring powers which could be used to pre-censor radio broadcasts (see para. 220 of the fourth periodic report) and to amend the vague definition of "false messages" in the Telecommunication Ordinance (see para. 233 of the fourth periodic report). It will also amend the Prison Rules which relate to the supervision of prisoners' correspondence.

52. Official secrets. In July 1995, the United Kingdom Government submitted proposals to the Chinese Government, through the Sino-British Joint Liaison Group, on how to "localize" the Official Secrets Acts and adapt the Crimes Ordinance. The Hong Kong and United Kingdom Governments believe that these proposals:

(a) Balance the need to protect freedom of expression by the individual with the need to protect public order and security;

(b) Are consistent with the Joint Declaration, the Basic Law, the Bill of Rights and the Covenant as applied to Hong Kong; and therefore

(c) Provide a practical basis for legislation that would be capable of continuing in force after 1997.

53. These proposals have been made with reference to article 23 of the Basic Law, which requires the Hong Kong Special Administrative Region to enact laws inter alia "to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of State secrets". They are under active discussion in the Joint Liaison Group. Both the British and Chinese sides are currently clarifying various issues that have arisen in the course of the discussion. The United Kingdom Government continues to urge on the Chinese Government the need for early and substantive progress.

54. Privacy and the law. The Hong Kong Government is carefully considering recommendations, made by a subcommittee of the Hong Kong Law Reform Commission, on the regulation of surveillance and the interception of communications. The main thrust of the report, which was issued for public consultation in April 1996, is that there is an increasing need to ensure the privacy and security of telecommunications. The subcommittee has recommended updating the existing laws in this area to provide adequate and effective safeguards.

55. The subcommittee takes the view that:

(a) Physical surveillance is a sufficiently serious intrusion into a person's privacy to warrant the use of criminal sanctions;

(b) The intentional interception of, or interference with, communications (transmitted by mail or by an electronic telecommunications system) should be an offence;

(c) The intentional interception of, or interference with, a communication by means of a technical device - whether or not the communication itself is mediated by means of such a device, but subject to the proviso that the interception concerned could not have been effected without the use of such a device - should be an offence; and

(d) Where there are legitimate grounds for the surveillance or interception of communications, there should be a requirement for such action to be authorized by warrant issued by the High Court. Such a warrant should be issued only for the purpose of preventing or detecting serious crime or for the purpose of security, defence or international relations in respect of Hong Kong. The judge must be satisfied that the information cannot reasonably be obtained by other means.

56. The subcommittee will take account of comments received - including those of the Hong Kong Government - before producing its final report for endorsement by the Law Reform Commission as a whole. The Hong Kong Government will study the Law Reform Commission's report before reaching a view on what changes to the existing legislation will be necessary. It will then bring forward legislative proposals at the earliest possible date.

57. Media self-censorship. The Hong Kong Government is aware that self-censorship has become an area of concern, especially among journalists. Its policy is to maintain an environment in Hong Kong in which a free and active press can operate under minimum regulation - regulation which does not fetter freedom of expression or editorial independence. The Hong Kong Government does not believe, therefore, that it should intervene in matters of self-censorship and editorial independence. It considers that a free and vigilant press, whose rights and freedoms are guaranteed by law, is ultimately the most effective safeguard against self-censorship.

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